

CASE NO.:
Appeal (civil) 2269 of 1981

PETITIONER:
KADIYALA RAMA RAO

Vs.

RESPONDENT:
GUTALA KAHNA RAO (DEAD) BY LRS & ORS.

DATE OF JUDGMENT: 01/01/2000

BENCH:
S.B.Majumdar, U.C.Banerjee

JUDGMENT:

BANERJEE, J.
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This appeal pertains mainly to the question of validity of court sale in regard to immovable property. The facts in the appeal may briefly be adverted in order to appreciate the issue involved effectively.

The situation is now thus by reason of the legislative changes as above is clear enough to indicate that an order passed by court subordinate to the High Court in its appellate jurisdiction, if it is not appealable, would be within the ambit of Section 115 of the Code and thus a revisional application would be maintainable. A revisional application against an order which is not appealable either before the subordinate court or the High court would also be maintainable. Let us now at this juncture however, come to the contextual facts in order to appreciate the issue involved more effectively. The petitioner is a stranger auction purchaser of a house property sold in court auction on 31st July, 1978 in pursuance of a mortgage decree dated 4.6.1975 passed in C.S.No.1245 of 1973 on the file of the court of District Munsif, Rajamundhry, Andhra Pradesh. The court sale of the house property was effected upon payment of 25% of the sale price offered by the highest bidder. Subsequently, the sale was confirmed on 31st July, 1978 upon payment of the full purchase price. On 26th August, 1978 the respondents herein filed an application to set aside the auction sale dated 31st July, 1978. The learned District Munsif Rajamundhry, however by an order dated 31st August, 1978 rejected the said application and thereafter confirmed the sale and disposed of the Execution Petition on the same day and a cheque for Rs.4420/- was issued in favour of the Advocate for the decree holder and thereupon the full satisfaction was duly recorded. It is significant to note that the appellant took delivery of the house property on 9th November, 1978. Subsequently, on an application filed under Section 115 of the Code of Civil Procedure before the High Court of Andhra Pradesh, the respondents herein

obtained an interim stay of the proceedings on 22.11.1978 upon deposit of half of the decretal amount. On 4th April, 1980, the High Court however further directed the respondent to deposit the remaining half of the decretal amount. The records depict that the respondents duly complied with the orders of deposit. The Revision Petition thereafter upon hearing was allowed by the High Court and the appellant herein subsequently filed a Review Petition which was however, dismissed by the order dated 22nd December, 1980 by the Learned Single Judge of the High Court and hence the Appeal before this Court. To appreciate the contentions raised in the matter, it would however, be convenient to note the provisions of Order 21 Rule 90 which reads as below: 90 [S.311] (1) Where any immovable property has been sold Application to in execution of a decree, the decree-holder, or set aside sale the purchaser, or any other person entitled to on ground of share in a rateable distribution of assets, or irregularity or whose interests are affected by the sale, may fraud. apply to the Court to set aside the sale on the ground of material irregularity or fraud in publishing or conducting it.

(2) No sale shall be set aside on the ground of irregularity or fraud in publishing or conducting it unless, upon the facts proved, the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud. (3) No application to set aside a sale under this rule shall be entertained upon any ground which the applicant could have taken on or before the date on which the proclamation of sale was drawn up. Explanation: The mere absence of, or defect in, attachment of the property shall not, by itself, be a ground for setting aside a sale under this rule.

On a plain reading of the provisions thus three several factors emerge and which ought to be taken note of in the matter of setting aside the sale of an immovable property, viz., (i) material irregularity and fraud in publishing or conducting the sale; (ii) the Court dealing with such an application is satisfied that the applicant has sustained substantial injury by reason of such an irregularity or fraud; and (iii) no application would be entertained upon a ground which the applicant could have taken on or before the date of drawing up of the proclamation of sale.

The only issue was of saleable interest for a period of 15 years since the deed of sale has executed by the Municipality of Rajamundhry and the Judgement-Debtor contained a condition that the property cannot be alienated by the Judgment-Debtor for a period of 15 years. It is to be noticed at this juncture that question of saleable interest does not come within the ambit of Order 21 Rule 90 and as such the Judgment-Debtor have not locus standi to apply to the Court for setting aside the sale. Statute recognizes such a locus standi only in the event of material irregularity or fraud and not otherwise. Apart therefrom, saleable interest can only be challenged by the purchaser and not by the Judgment- Debtor since the purchasers right would otherwise be clouded therewith by reason of there being no saleable interest in the property so far as the Judgment-debtor is concerned. Order 21 Rule 91 is specific on this score and a right has been conferred on to the purchaser only. Let us now at this juncture recount the order against which the Revision Petition was moved before

the High Court. The Order is set out herein below: Heard Mr. P.M. Gandhi, perused the petition. As stated by Mr. P.M. Gandhi, petitioners who have had sale notice did not raise the present objection regarding the nature of property raise i.e., that it is not saleable. However to give them an opportunity to avoid the sale by paying the E.P. amount their counsel if asked whether they are willing to pay the E.P. amount. He is not able to give any positive reply. Petition is prima facie devoid of bonafides besides being belated. Hence rejected.

At this juncture the Andhra Pradesh and Madras Amendment Order 21 Rule 90 are also to be noticed. The said amendment reads as below: Provided that the Court may, after giving notice to the applicant, call upon him before admitting the application, either to furnish security to the satisfaction of the Court for an amount equal to that mentioned in the sale warrant or to that realized by the sale, whichever is less, or to deposit such amount in Court: Provided also that the security furnished or the deposit made as aforesaid shall be liable to be proceeded against only to the extent of the deficit on a re-sale of the property already brought to sale. In the present proviso after the word Provided insert the word further.

It is on this score the Learned District Munsif has offered such an opportunity to avoid the sale by deposit of money, as such there is due compliance thereof, of the requirement of law in terms of the Andhra Pradesh Amendment to the provisions of the Code as noticed above. The contextual facts depict that the Revision Petition was dismissed on 11th April, 1980 that is long after the completion of sale which has been totally ignored and the Learned Single Judge as a matter of fact has proceeded on a total misconception of facts. Be it noted that at no point of time, any question was raised as regards the total purchase price and as such, a faint attempt on the part of the respondent herein before this Court to denounce the sale on the ground of quantum of purchase price, in our view, ought not to be permitted to be raised before this Court at this juncture. The Learned Single Judge erroneously proceeded on certain misconception of facts as also of law by reason of the factum of challenge of sale on the ground of saleability. Order 21 Rule 90 does not envisage an issue of saleability and the Learned Single Judge was in error in introducing such a concept under Order 21 Rule 90 of the Code. In any event as noticed above no saleable interest can be agitated by the purchaser only in terms of Order 21 Rule 91 and not by the Judgment-debtor. The grounds of challenge is specific in the provision itself namely, material irregularity or fraud and in the absence of any evidence or even an allegation in regard thereof in the petition under Order 21 Rule 90, question of introduction of the concept of no saleable interest or another opportunity to the judgment-debtor does not and cannot arise. In that view of the matter, this Appeal succeed. The order passed by the Learned Single Judge as impugned in this Appeal stands set aside and quashed and in that view of the factum of the position of the property being with the purchaser, we are not inclined to issue any directive in that regard. There is no order as to costs.